

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

Ivan Dominguez,

Plaintiff,

v.

Howell, et al.,

Defendants.

Case No. 2:20-cv-00532-APG-DJA

Order

This is a prisoner civil rights action arising out of Plaintiff Ivan Dominguez' assertion that Defendant Chris Weidick—a teacher at the Southern Desert Correctional Center—discriminated against him. (ECF No. 14). After the Attorney General's office asserted that it would not defend Weidick in the action, the Attorney General's office filed Weidick's last known address under seal. (ECF Nos. 10 and 11). However, after Plaintiff filled out his Form USM-285 to serve summons, it appears that the summons was served at an address different than the one filed under seal. (ECF No. 16). The summons was returned unexecuted. (ECF No. 18). The twenty-day deadline for Plaintiff to file a motion to attempt service again—provided for in this Court's order (ECF No. 13)—passed.

The Court then ordered Plaintiff to show cause why he had not specified how service could be re-attempted and whether he intended to attempt service on Weidick once more at the address filed under seal. (ECF No. 19). The Court noted that, because it appeared service was initially attempted at a different address than that filed under seal, Plaintiff would have one more opportunity to attempt service. (*Id.*). Plaintiff responded and appeared to ask for another attempt to serve Weidick. (ECF No. 21); *see Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988) (explaining that *pro se* pleadings are liberally construed, particularly where civil rights claims are involved). Plaintiff appears to, understandably, be confused about the process by

1 which he can serve a defendant whose address is filed under seal. Given the public policy to
2 decide cases on their merits, the Court grants Plaintiff one more attempt to serve Weidick
3 consistent with the instructions below. *See Balistreri*, 901 F.2d at 699 (“[t]his court recognizes
4 that it has a duty to ensure that pro se litigants do not lose their right to a hearing on the merits of
5 their claim due to ignorance of the technical procedural requirements”); *See Borzeka v. Heckler*,
6 739 F.2d 444, 447 n.2 (9th Cir. 1984) (explaining that defective service of a complaint by a pro se
7 litigant does not warrant dismissal).

8 Additionally, the Court is not blind to facts before it, even those not in this case. Having
9 dealt with another case involving this Defendant, the Court has reason to believe that the address
10 the Attorney General previously filed under seal may be outdated. The Court thus orders the
11 Attorney General’s office to confirm Weidick’s last known address and refile the corrected and
12 confirmed address under seal. After the Attorney General’s office files the address under seal, it
13 shall file a notice that it filed the address under seal and mail a copy of the notice to Plaintiff’s
14 address. This notice should include the ECF number of the under-seal filing.

15
16 **IT IS THEREFORE ORDERED** that the Attorney General’s office shall confirm that
17 the last known address for Defendant Weidick is correct and re-file the address under seal by
18 **Wednesday, February 16, 2022**. The Attorney General’s office is further directed to file a
19 notice of the under-seal submission and mail a copy of the notice to Plaintiff. This notice should
20 include the ECF number at which Weidick’s last known address is filed under seal.

21 **IT IS FURTHER ORDERED** that, within **twenty days** of receiving the notice of under-
22 seal submission, Plaintiff shall fill out a USM-285 form for service on Weidick. On the form,
23 Plaintiff must leave blank Weidick’s last known address and indicate on the form that Weidick’s
24 last known address is filed under seal at the ECF number identified in the Attorney General’s
25 notice of under-seal submission.

26 **IT IS FURTHER ORDERED** that, within **twenty days** after receiving from the U.S.
27 Marshal a copy of the USM-285 form showing whether service was accomplished, Plaintiff must
28 file a notice with the Court explaining whether Weidick was served.

IT IS FURTHER ORDERED that the Clerk of Court is kindly directed to mail Plaintiff a copy of this order and three blank USM-285 forms with instructions. The Clerk of Court is also kindly directed to reissue summonses for Defendant Chris Weidick and deliver the same to the U.S. Marshal for service along with a copy of the complaint (ECF No. 14) and this order.


DANIEL J. ALBRECHTS

DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE